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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: PHP Healthcare Corporation; Sisters of
Charity of the Incarnate Word

File: B-251799; B-251799.2; B-251799.3

Date: May 4, 1993

Joel R. Feidelman, Esq., and Shannon H. Renchard, Esq.,
Fried, Frank, Harris, Shriver & Jacobson, for PHP Healthcare
Corporation, and James H. Roberts, III, Esq., and
Beverley K. Carmichael, Esq., Manatt, Phelps & Phillips, for
Sisters of Charity of the Incarnate Word, the protesters.
Robert E. Gregg, Esq., Hazel & Thomas, for JSA Healthcare
Corporation, an interested party.

Captain Gerald P. Kohns, Department of the Army, for the
agency.

Peter A. Iannicelli, Esq., and Michael R. Golden, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

1. Protest that agency did not conduct a cost/price realism analysis as required in request for proposals (RFP) for fixed price contract is denied because: (1) RFP stated that proposals would be evaluated for cost/price realism but did not specify the manner or degree of analysis required; (2) agency made an intensive effort to formulate an accurate estimate and compared offerors' proposals to that estimate; (3) contracting officials looked at individual cost elements of proposals and requested responses from offerors where cost elements appeared unrealistic or otherwise inadequate; and (4) price proposals were compared with each other in an effort to determine that prices were fair and reasonable.

2. Protest that cost/price realism analysis was unreasonable because agency did not adjust awardee's evaluated price upward to reflect unrealistically low cost elements is denied where RFP was for a fixed price contract and contained no requirement that agency make upward adjustments for cost elements contracting officials believed to be priced too low.

3. Where request for proposals stated that technical factors combined were significantly more important than price, agency properly awarded fixed price contract to lower technically rated, lower priced offeror instead of higher technically rated, higher priced offeror, where agency

determined that the difference in technical ratings did not warrant paying a \$9 million premium to higher technically rated offeror.

4. Contracting officials properly may allow offeror to resolve apparent clerical mistakes in best and final offer without reopening discussions with all competitive range offerors; such communications are considered clarifications, not discussions, and do not allow offeror an opportunity to revise or modify its proposal.

5. Where offeror's best and final offer (BAFO) contained discrepancies between unit and extended prices for a number of line items on the schedule, contracting agency properly allowed correction to reflect unit prices that were consistent with extended prices, where: (1) unit prices clearly were out of line with prices of other offerors in the competitive range and the independent government estimate, and, therefore, only the extended prices reasonably could be regarded as representing the intended offer and (2) the sum of all extended prices equaled exactly the total price stated in the Contract Pricing Proposal Cover Sheet (Standard Form 1411) that was part of BAFO.

DECISION

PHP Healthcare Corporation (PHP) and Sisters of Charity of the Incarnate Word (Sisters of Charity) protest award of a contract to JSA Healthcare Corporation (JSA) by the Department of the Army pursuant to request for proposals (RFP) No. DADA10-92-R-0006. The protesters argue that the Army did not evaluate proposals for cost realism as required under the RFP. Sisters of Charity contends that the agency improperly awarded the contract to JSA on the basis of price rather than following the RFP's evaluation scheme that stated that technical factors were more important than price. Additionally, Sisters of Charity asserts that contracting officials inappropriately engaged in discussions with JSA after best and final offers (BAFO) were submitted, allowing JSA to reduce its price, without engaging in discussions with any other firms.¹

¹PHP and Sisters of Charity initially protested that the Army failed to conduct meaningful discussions with them and improperly evaluated their technical proposals. The Army rebutted these allegations in its report. Neither PHP nor Sisters of Charity addressed these issues in their comments on the agency's report. Accordingly, we consider these grounds of protest abandoned and will not consider them further. See Heimann Sys. Co., B-238882, June 1, 1990, 90-1 CPD ¶ 520.

We deny the protests.

Issued on May 12, 1992, the RFP solicited offers to establish and operate two medical clinics for the Fort Hood Army Medical Department Activity. The contractor would provide the clinics, all professional and nonprofessional staff and services to operate the clinics, and all necessary equipment and supplies. The RFP required a full and varied range of health care services, including those to be provided by physicians, nurses, pharmacists, optometrists, and laboratories. The RFP also required that offers include a certain number of well-women exams and school physicals for authorized beneficiaries of enrollees. The RFP contemplated award of a firm, fixed price, indefinite quantity contract for a base period of 6 months and contained options for four additional 1-year periods. Payment would be based upon a fixed price for the total population enrolled to receive primary care at a particular clinic. The clinics were to be located in Killeen and Copperas Cove, Texas.

Concerning the basis for award, the RFP indicated that the option periods would be considered in evaluating price and also stated:

"In selecting the offer most advantageous to the Government, the following factors will be considered:

- Factor A: Management and Financial Capabilities
- Factor B: Approach to Satisfying Requirements
- Factor C: Quality Control/Assurance
- Factor D: Marketing Plan
- Factor E: Price/Cost to Government (includes cost breakdown)

"Of the above factors, A through D comprise the technical portion of the proposals. Factors A, B, and C are approximately equal to each other in importance. Factor D is approximately one third as important as Factor A, B, or C. Technical factors A, B, C, and D combined are significantly more important than Factor E. The Government is interested in proposals that offer value in meeting the requirements-quality performance with acceptable risk at a fair and reasonable price."

Regarding evaluation of the price/cost factor, the RFP stated:

"Offeror's cost will be evaluated for realism and adequacy. The price will be evaluated using price analysis to determine a fair and reasonable price. The Government will consider the value of each proposal in terms of the quality offered for the price."

The RFP further stated:

"Proposals which are unrealistic in terms of technical response or unrealistic as to a particular cost element, will be deemed reflective of an inherent lack of technical competence or indicative of failure to comprehend the complexity and risks of the proposed contractual requirements. Such proposals may be rejected as unacceptable without further evaluation or discussion."

Nine proposals were received by the July 15, 1992, closing date for receipt of initial proposals. After evaluating initial proposals for technical merit, the agency determined that four proposals were unsatisfactory and eliminated them from the competitive range. Discussions were held with the five offerors of proposals remaining in the competitive range. Numerous revisions were made to proposals and a second and third round of technical evaluations were conducted between October 5 and November 10. BAFOs were requested and received by November 23.

After technical evaluations of BAFOs were completed, the agency rated the technical proposals of the protesters and JSA as follows:

<u>Offeror</u>	<u>Adjectival rating</u>	<u>Numerical score²</u>
Sisters of Charity	Outstanding	905.6
PHP	Excellent	898.5
JSA	Excellent	875.0

²1,000 points represented a perfect technical score. The adjectival categories and their corresponding technical point ranges were: Outstanding = 901-1,000; Excellent = 801-900; Satisfactory = 701-800; Susceptible = 601-700; Unsatisfactory = 600 or less.

Sisters of Charity's total price was \$42,439,418; PHP's total price was \$43,165,049; JSA's total price was \$33,253,901.

The Army reports that it compared all cost proposals to its detailed cost estimate to determine whether they were reasonable. The agency also reports that the contracting officer, a contract specialist, and the cost/price analyst reviewed the cost breakdowns submitted with proposals in an effort to identify components that did not meet RFP requirements and that were unrealistic or unreasonable. The agency states that price analysis was conducted by comparing offerors' prices to those proposed by other offerors and to the government estimate. Where the Army had questions concerning offerors' costs, it asked offerors to respond to its concerns during discussions.

After examining the differences in technical scores and proposed prices, the agency determined it was in the government's best interest to award to JSA. Accordingly, the Army awarded the contract to JSA on December 17.

Both protesters argue that the Army did not evaluate proposals for cost realism as required under the RFP. The protesters assert that JSA's price is unrealistically low and that, if JSA's costs had been analyzed and adjusted for realism, JSA's evaluated price would have been significantly higher, resulting in a different award decision.

The agency responds that a formal, detailed cost analysis was not required in this procurement because the contracting officer determined that adequate price competition was obtained. Nevertheless, the Army reports that it required offerors to provide cost data and performed a limited cost realism analysis in accord with the RFP evaluation scheme.

Cost realism, which measures the likely cost of performance, ordinarily is a mandatory consideration when a cost-reimbursement contract is involved since the government in general will be obligated to bear the actual cost of performance. This is not a factor in the evaluation of proposals when a fixed price contract is to be awarded, since the government's liability is fixed and the risk of cost escalation is borne by the contractor. See Culver Health Corp., B-242902, June 10, 1991, 91-1 CPD ¶ 556. However, since the risk of poor performance when a contractor is forced to provide services at little or no profit or with an underestimated workforce is a legitimate concern in evaluating proposals, an agency in its discretion may, as it did here, provide for a realism analysis in the solicitation of fixed price proposals. Id., Systems & Processes Eng'g Corp., B-234142, May 10, 1989, 89-1 CPD ¶ 441.

In our opinion, the Army did all that was required in the way of a cost/price analysis under the RFP. The RFP stated that both cost and price would be evaluated for realism, but did not specify the manner or degree of analysis to which proposals would be subjected. It is clear from the record that the Army made an intensive effort to formulate an accurate estimate. Army contracting officials prepared a detailed cost estimate for the services and supplies required over the life of the contract including option periods. The estimate was examined for accuracy by several cognizant contract officials, including a cost/price analyst and the contracting officer, and was revised on more than one occasion to reflect the government's best approximation of the costs of various elements as well as the overall cost to the government. Offerors' proposals were compared to that estimate.

As a result of the agency's realism analysis and related discussion questions, which identified areas in which the agency believed JSA's costs were low, JSA revised its proposal, increasing its proposed price by more than \$4 million. JSA's final proposed total price of \$33,253,901 compared very favorably to the government's estimate of \$34,267,954. Moreover, it is evident from the discussions letters that contracting officials looked at individual cost elements of proposals and requested responses from offerors to allay their concerns where cost elements appeared unrealistic or otherwise inadequate. Finally, price proposals were compared to other price proposals in the competitive range in an effort to determine that prices were fair and reasonable. Thus, the protesters err in contending that no cost/price realism analysis was conducted. See Aumann, Inc., B-245898.3; B-245898.4, July 22, 1992, 92-2 CPD ¶ 35.

Alternatively, Sisters of Charity argues that the Army's price/cost realism analysis of JSA's offer was unreasonable. The protester asserts that evaluators found JSA's proposal to be unrealistically low for three cost elements, but improperly did not adjust JSA's evaluated price upward. The three elements relate to JSA's proposed pay rate for physicians, staffing levels, and pharmaceuticals costs.

While an agency may evaluate offers for cost/price realism in a procurement for a fixed price contract, an agency may not make upward price adjustments for cost elements that agency contracting officials think may be priced too low. See, for example, Aumann, Inc., supra. In addition, the record shows that during discussions JSA either revised its proposal or clarified its pricing methodology to alleviate the Army's concerns that its prices were too low to perform the required services in certain areas.

JSA adjusted the rate it proposed to pay physicians upward after the Army suggested that JSA's proposed cost for that element was unrealistically low. The revised rate was only slightly less than the government's estimate. Also, JSA explained to the Army that it had calculated its cost after conducting a survey to determine the prevailing rate for doctors in the Killeen and Copperas Cove area, and JSA provided the Army a list of the sources it used to calculate the prevailing rate. JSA stated that it would also pay its doctors' malpractice insurance premiums and contribute to their continuing medical education costs. Significantly, JSA also assured the Army that it would provide quality doctors to fulfill contract requirements even if it had to absorb additional costs above those included in its cost breakdown.

The Army also told JSA during discussions that it was concerned that the proposed staffing was low and appeared inadequate to do the job. JSA responded by revising its proposal. JSA's revisions were substantial, rather than "slight" as suggested by Sisters of Charity. Among other things, JSA made significant increases in the number of hours (some were increased by 100 percent) proposed in a number of staff positions at both Killeen and Copperas Cove. JSA also added several new staff positions at both clinics improving its proposal where it had been perceived by the Army as weak initially.

Regarding the costs of pharmaceuticals, the Army told JSA that its proposed rate per prescription appeared to be too low. JSA responded to the Army's concerns by explaining that it had based its costs on a "per patient visit" basis rather than a "per prescription" basis as the Army had thought. Therefore, adjusting its costs to a per prescription basis revealed that they were approximately 10 percent higher for regular prescriptions and 128 percent higher for birth control pills than they were initially believed by the Army. Furthermore, JSA explained that its pharmaceuticals costs covered only the cost of the medicine but did not include the costs of bottles, labels, safety caps, etc., that JSA had included under the pharmaceutical supplies cost factor.

In view of the above, we cannot find that the Army's cost realism analysis of JSA's proposal was unreasonable, inconsistent with the RFP's evaluation scheme, or otherwise deficient regarding doctors pay rate, staffing levels, or pharmaceuticals. Overall, JSA's proposed total price increased more \$4 million as a result of the Army's realism assessment, discussions and JSA's revisions. In particular, JSA increased its staffing considerably, adding new positions where necessary to alleviate the Army's concerns. Additionally, JSA increased its pay to doctors to a level

that was almost exactly the same as the Army's estimate for this factor. Moreover, our examination of the independent government estimate found that JSA's proposed cost for pharmaceuticals was very close to the amount set out in the Army's estimate even though JSA's cost for this factor did not include bottles, caps and other associated supplies.

In a related matter, PHP contends that the Army's independent government estimate contains inconsistencies that invalidate the decision to award to JSA. PHP points out that the independent government estimate for the entire contract (including option periods) was \$37,603,298 before negotiations but the agency's report included a post-negotiation business clearance memorandum that stated that the government estimate was only \$34,267,953. The Army did not respond to this allegation, but our review of the documents found that the difference of approximately \$3.3 million is due to the fact that the original estimate used a 1-year basic contract period while the RFP was for a 6-month basic contract. Adjusting the estimate to account for the shorter period produces the lower total of the post-negotiation estimate. Therefore, this argument provides no basis for sustaining the protest.

Sisters of Charity next alleges that the contracting agency improperly decided to award the contract to JSA based upon JSA's low cost. Sisters of Charity asserts that it should have been awarded the contract, because the RFP stated that technical factors would be considered significantly more important than price and its proposal was the only proposal that received an "outstanding" technical rating. The protester suggests that under the RFP's evaluation scheme the price/cost factor could not properly have been weighted more than 10 percent of the award decision.³ We deny this protest ground.

The RFP stated that the contract would be awarded to the offeror whose offer was most advantageous to the government and that technical evaluation factors A, B, C, and D combined were significantly more important than factor E (price/cost). However, the agency's evaluation of BAFOs resulted in the five offers receiving technical scores ranging from a low of 868.5 points (excellent) to a high of 905.6 points (outstanding) for Sisters of Charity's proposal with JSA's proposal receiving a score of 875.0 (excellent). Even though Sisters of Charity's proposal was the only one that received an "outstanding" rating, the agency reports

³Nowhere did the RFP indicate that technical factors were worth at least 90 percent while cost was worth no more than 10 percent in the selection decision as Sisters of Charity asserts.

that the contracting officer considered all five offers to be substantially technically equal and awarded the contract to JSA because its proposal represented significant cost savings.

In a negotiated procurement, an agency may award to a lower priced, lower technically rated offeror if it determines that the price premium involved in awarding to a higher technically rated, higher priced offeror is not justified given the acceptable level of technical competence obtainable at the lower price. See W. M. Schlosser Co., Inc., B-247579.2, July 8, 1992, 92-2 CPD ¶ 8. Here, contracting officials analyzed the difference in technical merit accorded JSA's and Sisters of Charity's proposals as well as the large price differential, and determined that it was in the government's best interest to award to JSA. We find that the Army's cost/technical tradeoff was reasonable and in accord with the RFP's evaluation scheme.

Out of a possible 1,000 technical points, the difference between the lowest technical score and the highest was only 37.1 points, and the difference between JSA's score and Sisters of Charity's highest score was only 30.6 points. Among other things, the source selection document provided with the Army's report justified award to JSA on the basis that it would cost an extra \$300,180 for each additional point of technical merit represented by Sisters of Charity's proposal. Contracting officials (including the contracting officer) also examined technical proposals and evaluations to determine the areas in which Sisters of Charity's proposal was rated higher in technical merit than JSA's proposal. For example, the contracting officer identified approach to satisfying requirements as the area of major difference (28 points) between the two proposals. This factor consisted of 12 subfactors, but under the two subfactors, understanding the scope of work and clinic usage patterns, the five-point difference between the two proposals was not supported by any significant difference in the proposals. Further, the remaining point differences (17.9 points) was spread out among the other 10 factors. Thus, in the contracting officer's view the points did not represent or point to any significant difference in the two proposals. Based upon this analysis, the Army determined that "the significance of the specific technical differences, and the overall value of each proposal in terms of quality offered for price are not considered significant enough to justify an additional \$9,185,516.16."

Furthermore, notwithstanding the fact that Sisters of Charity's proposal qualified for an adjectival rating of "outstanding" while JSA's proposal received an "excellent" rating, the contracting officer's report on the protests states that the contracting officer considered the proposals

to be substantially technically equal.⁴ In this regard, the record shows that JSA's technical score was only about 3.3 percent lower than Sisters of Charity's technical rating.

In our view, the closeness in technical points lends credibility to the contracting officer's determination that the proposals were essentially technically equal. See Cajjar Defense Support Co., B-239297, July 24, 1990, 90-2 CPD ¶ 76 and cases cited. When proposals are viewed as essentially technically equal, price properly becomes the determining factor in the selection of the awardee.⁵ Id. Considering the tremendous price differential between Sisters of Charity's and JSA's proposals, the agency's cost/technical tradeoff analysis, and the contracting officer's determination that proposals were substantially technically equal, we find that the contracting officer properly awarded the contract to JSA based on its low priced but technically excellent proposal. Id.

In its comments on the agency's report, PHP asserted that the Army's second and third technical evaluations were deficient, because there were no narrative explanations to support individual evaluators' scoring adjustments made in response to offerors' proposal revisions.

Our examination of evaluator scoresheets established that PHP is correct in some instances. For example, one evaluator raised JSA's score for staffing from 21 to 24 points without including any explanation. However, in many other instances, narrative explanations were included on the scoresheets. For example, one evaluator raised JSA's score from 17 to 22.5 points for task identification stating that JSA "addressed medical records/receptioning well." In many other instances, it is evident from the agency's discussion letters and the offerors' responses why evaluators upgraded technical scores for certain evaluation factors.

In any event, we do not believe that PHP was competitively prejudiced by the fact that some evaluators did not fully explain their rescoring of proposals. First, the alleged inadequacies occur sporadically throughout evaluation of each and every offeror's proposal. There does not appear to be any bias toward or against any particular offeror. More

⁴In fact, the contracting officer reported that all five BAFOs were considered to be essentially equal in technical merit.

⁵JSA's proposal represented a savings of approximately \$9.2 million over Sisters of Charity's proposal and approximately \$9.9 million over PHP's proposal.

importantly, we do not believe that occasional failures by individual evaluators to document relatively minor scoring changes could possibly have prevented PHP from being awarded the contract. JSA's and PHP's proposals were rated "excellent" after both initial evaluation and final evaluation.⁶ However, PHP's price was about \$9.9 million higher than JSA's. Even if PHP were given the benefit of every scoring increase between initial and final evaluation and JSA only received the benefit of those that were explained, we do not see how PHP could overcome such an immense price differential. This is especially so here where the contracting officer determined all BAFOs, even the lowest scored proposal that received a technical score of only 868.5, to be essentially technically equal. As competitive prejudice is an essential element that must be shown by a protester if it is to prevail in its bid protest, and PHP has made no such showing here, this allegation provides no basis for overturning the award to JSA. See Tampa Shipyards, Inc., B-231802, Sept. 30, 1988, 88-2 CPD ¶ 304

Finally, in its comments on the Army's report on the initial protests, Sisters of Charity raises a new ground for protest. Sisters of Charity asserts that contracting officials improperly engaged in discussions with JSA after the closing date for submission of BAFOs and allowed JSA to lower its proposed price, but did not reopen negotiations with all other offerors or allow them to revise proposals and submit new BAFOs.

Specifically, according to Sisters of Charity, the post-BAFO "discussions" between JSA and contracting officials concerned JSA's proposed price only and resulted in JSA's lowering its total proposed price from \$166,544,502 to \$33,253,903.⁷ Sisters of Charity contends that since its own total proposed price was \$42,439,418 and its BAFO received the highest technical rating, it was prejudiced by the Army's improperly allowing JSA to reduce its proposed price by more than \$133 million to a total price that was more than \$9 million less than Sisters of Charity's proposed total price.

The Army reports that contracting officials first noted the discrepancy between JSA's unit and extended prices when entering proposed prices on the abstract of offers. According to the Army, it was obvious that the unit prices in JSA's BAFO were incorrect and that the extended prices

⁶JSA's initial technical score was 847.3 while PHP's was 854.1. After BAFOs were evaluated, PHP's score had risen to 898.5 and JSA's score to 875.0.

⁷We have rounded all figures off to the nearest dollar.

were correct. The Army points out that the sum of all of JSA's extended prices equaled \$33,255,901, the exact figure JSA stated in the Contract Pricing Proposal Cover Sheet (Standard Form 1411) that was part of its BAFO. The agency reports that contracting officials therefore allowed JSA to submit corrected schedule B pages reflecting lower unit prices. We find that the Army properly allowed correction of JSA's offer.

Contracting officers are required to "examine all proposals for minor informalities or irregularities and apparent clerical mistakes. Federal Acquisition Regulation (FAR) § 15.607(a). When a mistake is suspected before award in a negotiated procurement, the FAR contemplates that the mistake will be resolved through clarifications or discussions. See FAR §§ 15.607(a) and 15.610(c)(4). The thrust of the regulation is that correction of a mistake, without conducting discussions with all offerors, is appropriate only where the existence of the mistake and the proposal actually intended can be clearly and convincingly established from the RFP and the proposal itself. See Energy Container Corp., B-235595.2, Nov. 2, 1989, 89-2 CPD ¶ 414.

Where it is clear from the offer itself what price was actually intended, or where on the basis of logic and experience it can be determined that one price makes sense while the other does not, correction of an offer is allowed. See J&J Maintenance, Inc., B-251355, Mar. 1, 1993, 93-1 CPD ¶ _____. The factors that go into such a determination may include comparison with the other offerors' prices and the government estimate. Id.

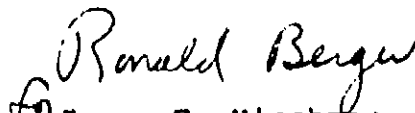
It is clear from the record that JSA's unit prices for a number of line items were incorrect and that JSA's extended prices represent JSA's intended offer. Proposed BAFO prices of all other offerors ranged from a low of \$33,510,234 to a high of \$43,165,050, and the independent government estimate for the basic plus option periods totaled only \$34,267,954. Using JSA's extended prices yields a total proposed price of \$33,255,902 which is a reasonable amount given the totals of the other offers and the government estimate. On the other hand, assuming that the unit prices are correct, as Sisters of Charity suggests, yields a total price of \$166,544,502--clearly an unreasonable amount that is approximately 5 times more than the government estimate and more than \$123 million higher than the next highest offer.*

*In this regard, where there were discrepancies between JSA's unit and extended prices, we compared JSA's unit prices to those of both protesters. We found that JSA's unit prices were between 3.3 and 9.5 times more than the

(continued...)

In these circumstances, correction of unit prices to correspond to extended prices is proper, notwithstanding the standard solicitation provision that unit prices govern where there are discrepancies between unit and extended prices, since the latter represent the only reasonable interpretation. Id.; see also Energy Container Corp., supra. Moreover, because JSA's extended prices totaled \$33,255,901.92, the exact figure JSA stated in the Contract Pricing Proposal Cover Sheet, it was clear from the offer itself what JSA intended as its total price. Agency contracting officials, therefore, properly contacted JSA to resolve the apparent clerical mistakes; such communications are considered clarifications, not discussions. FAR § 15.607(a). Clarifications, unlike discussions, do not give an offeror an opportunity to revise or modify its proposal, and, therefore, the Army did not have to reopen discussions with all competitive range offerors. See Stacor Corp., B-231095, July 5, 1988, 88-2 CPD ¶ 9.

The protests are denied.


James F. Hinchman
General Counsel

⁴(...continued)
protesters' unit prices. Obviously, JSA's unit prices, not its extended prices, were mistaken.